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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,687	02/04/2002	Robert L. Doubler	2131.015	8506
21917	7590	02/25/2004		
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3732	PAPER NUMBER

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/067,687

Applicant(s)

DOUBLER ET AL.

Examiner

P dro Philogene

Art Unit

3732

-- Th MAILING DATE of this communication appears on the cover sheet with th correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Allowable Subject Matter

The indicated allowability of claims 3, 4 is withdrawn in view of the newly discovered reference(s) to Young and Freid et al.. Rejections based on the newly cited reference(s) follow.

Claim Objections

Claim 3 is objected to because of the following informalities: claim 3, line 16, the term "spherical second end" should be --tapered second end--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mullane (6,050,997) in view of Young (6,626,906) in view of Freid et al. (6,331,179).

With respect to claims 3,5, Mullane discloses an anchoring assembly for insertion in skeletal bone, the anchoring assembly having a linking member having a threaded first end (42) for engaging a securing nut, a bone engaging member (20) having a first end adapted to engage the bone and a second end comprising a retention cavity (34) constructed and arranged to engage the linking member second end the retention cavity having a substantially spherical exterior surface and a circular open mouth; as best

seen in FIG.4; the improvement comprising the retention cavity has a spherical inside wall, the wall narrowing toward the circular mouth; as best seen in FIG.4, a bracing device (24) in the cavity for selectively maintaining the linking member second end ; as seen in FIG.14, in a chosen orientation within the retention cavity.

It is noted that Mullane did not teach of a linking member having a tapered second end whereby tightening of the securing nut draws the linking member second end against the split retention ring along the narrowing spherical inside wall reducing the gap and applying progressive pressure on the linking member and selectively prevents relative motion between the linking member and the bone engaging member; as claimed by applicant. However, in a similar art, Young evidences the use of a linking member (5) having a tapered second defining a socket to hold a vertebral anchor and a split ring that compress to grip a rod.

Therefore, given the teaching of Young, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the linking member of Mullane, as taught by Young, to define a socket to hold the vertebral anchor.

It is further noted that the above combination of references did not teach of a split ring having a tapered aperture therethrough, as claimed by applicant. However, in a similar art, Fried et al evidence the use of a split ring having a tapered aperture therethrough to facilitate the insertion of the ring into an end hole or to match a tapered head of a fastener.

Therefore, given the teaching of Fried et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bracing

device of mullane/Young with the split ring as taught by Fried et al., to match a tapered head of a fastener and facilitate the insertion of the ring into an end hole.

With respect to claims 4,6, the above combination of references teaches all the limitations, as set forth.

Response to Amendment

Applicant's arguments with respect to claims 1,2,5-7 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments, see page 7, lines 12-22, page 8, lines 1-10 filed 12/15/03, with respect to the Double Patenting rejection of claims 1-7 have been fully considered and are persuasive. The Double Patenting rejection of claims 1-7 has been withdrawn.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
February 19, 2004



PEDRO PHILOGENE
PRIMARY EXAMINER